

Received 1/18/96

DRAFT

Confidential

January 4, 1995

Brewster Kahle
WAIS, Inc.
690 5th Street
San Francisco, CA 94107-1517

Dear Brewster:

This is to confirm our agreement regarding the transfer of the WAIS, Inc. ("WAIS") software business to a new company you will be establishing, and the arrangements we have made regarding America Online Inc.'s ("AOL" or the "Company") interest in, and your employment by, that new company.

Severance Terms and Conditions:

I. New Corporation

A. The Company consents to your formation of a new corporation, the principal business of which will include (i) ~~commercializing the existing WAIS software technology and (ii) providing support and maintenance services under all of the existing (as well as any future) maintenance and support service contracts~~ listed in Appendices A and B ("Newco") and to the employment by Newco of up to four employees currently employed by the Company, Bruce Gilliat, Tom Ajaybi, Marion Esanu, and a fourth, non-key employee of AOL, subject to and conditioned on the performance of your obligations under this Letter Agreement.

B. All of the initially authorized capital stock of Newco will be issued or reserved as follows: 34% to you, 33% expressly reserved for issuance under an employee stock option plan, and 19.9% to be issued to AOL upon formation of Newco and 13.1% to be reserved for issuance to AOL pursuant to AOL's option to acquire up to 13.1% in the future at a nominal price. In the event Newco authorizes and issues additional capital stock within five years after formation, AOL has anti-dilutive rights to maintain its percentage ownership at a ~~market~~ nominal purchase price.

C. You will cause Newco to authorize AOL to designate one person to the Board of Directors of Newco, initially to be _____, for the duration of the period that (i) AOL continues to hold not less than 30% of the then authorized and issued stock or option to acquire such stock in Newco and (ii) the designated director has missed not more than 30%

discretion, as used herein, shall include, without limitation, consideration of whether AOL or its affiliates would likely incur substantial economic injury or damage to its reputation as a result of your competitive conduct. In the event that AOL elects not to waive the violation, it shall so notify you within such fifteen day period, and its decision shall be final, and you hereby agree not to contest or dispute such decision in any way whatsoever.

C. The four AOL employees who join Newco will no longer be bound by any non-compete obligations they agreed to with AOL, but will be obligated to maintain the confidentiality of trade secrets and proprietary and other confidential information they obtained at AOL. Additionally, these employees may use space and network facilities in the WAIS, Inc. office in San Francisco for 6 months or until AOL has terminated the lease, whichever is sooner.

IV. Stock Options

A. Notwithstanding any agreement you have with AOL regarding stock options, which is hereby amended as follows, or the terms of AOL's 1992 Employee Director and Consultant Stock Plan (the "1992 Plan") to the contrary, AOL hereby agrees that 25% of the total number of your AOL options would otherwise have vested over a four year period but for your termination of employment shall vest on May 23, 1996, pursuant to and in consideration for a Consultant Agreement which you agree to enter into with AOL, which shall provide that you will make available to AOL reasonable consulting services within your area of expertise, not to exceed three days per month, until May 23, 1996-. All other AOL options which were granted to you hereby lapse.

B. With respect to the AOL employees you are taking with you to Newco, except for Bruce Gilliat, AOL hereby agrees to continue the vesting of all AOL stock options granted to such employees under the 1992 Plan until May 23, 1996, provided that such employees enter into a Consultant Agreement similar to the one you will enter into requiring them to render consulting services to AOL until such vesting date. AOL stock options which would not otherwise vest by May 23, 1996 will lapse upon each such employees' termination of employment with AOL. The WAIS options of Bruce Gilliat which were converted into AOL options upon AOL's acquisition of WAIS shall continue to vest until January 1, 1997, provided that Bruce Gilliat enters into a Consultant Agreement as described above for services to AOL until such vesting date. All other AOL stock options granted to Bruce Gilliat will lapse upon his termination of employment with AOL.

In consideration for the terms described above, the Company and you each agree:

- (i) Not to do or say anything to criticize or damage the reputation of the other party, or, in your case, not to harm the Company's management or normal, ongoing business operations, unless required to give testimony during legal proceedings.
- (ii) To release and forever discharge the other party and, as pertains to the Company, including any affiliated or successor corporation or other entity, and all of their officers, directors and employees (collectively, the "Affiliated Companies") from any and all losses, expenses, claims, rights and entitlements, whether known or unknown, that each party has now or may later claim to have had against the the other, including, without limitation, those arising out of your employment or termination of employment with the Company, excluding only your rights to any vested pension benefits, but excluding the obligations under this Agreement- This includes, but is not limited to, any claims for back pay, for reinstatement or for recovery of any losses or other damages to you or your property based on any alleged violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section

of the scheduled board meetings for the preceding fiscal year of Newco. Changes in the Board member designated by AOL will be mutually agreeable to Newco and AOL.

D. You hereby assume all current and future obligations and liabilities under each WAISserver maintenance and support contract listed on ~~Appendices~~ Exhibit A and B hereto. To the extent that any such contract is not assignable you hereby indemnify AOL, its employees, officers, directors and other representatives for all such obligations and liabilities which AOL, using commercially reasonable efforts, is not able to divest or settle for less than \$1,000 within six months of the date hereof. Upon the date of their employment by Newco, you will assume all liabilities with regard to any obligations accrued after such date to the up to 4 employees to be hired pursuant to Section IA above. AOL agrees to provide you reasonable access to WAIS files and other information within its control and personnel who worked on WAIS matters in connection with your performance under such contracts. Newco would also assume the royalty contracts listed on Exhibit B hereto.

II. Software

A. The Company agrees to transfer to you its right, title and interest in and to (I) all existing proprietary WAIS software, and (ii) the trademark and/or service mark in WAIS, Inc. and the domain name wais.com, provided that you grant to AOL a fully paid, world wide, perpetual, and unrestricted license to the same such software, including all enhancements, modifications, upgrades, and functional equivalents, and the unrestricted right to sublicense and distribute the same to its affiliated persons and companies, including joint ventures in which it owns at least 30%, and you hereby so grant the foregoing to AOL effective as of the same date AOL grants and delivers to you the source code and related documentation to consummate the above described transfer. The parties do not contemplate that such redistribution rights include commercial sales by AOL to unrelated third parties.

B. The Company acknowledges and agrees that it has no rights and will claim no right, title or interest in software or any other product developed by Newco after the date of the closing of the Newco transaction contemplated by this letter, without limiting or forfeiting any of the Company's above described license to use any WAIS software. With respect to products or services offered by Newco in the future, AOL shall be entitled to most favored customer treatment on all matters including price and availability of services.

III. Non-Compete

A. That certain Non-Competition and Non-Solicitation Agreement entered into by and between AOL, WAIS (formerly known as AOL Acquisition Corp.) and you as of May 23, 1995 (the "Non-Compete Agreement"), a copy of which is attached hereto, remains in full force and effect, subject to the following provisions. The parties hereby agree that the Non-Compete Agreement is amended by (i) AOL's agreement to allow you to conduct the business of Newco as contemplated in this Letter Agreement and (ii) any exception to the Non-Compete Agreement subsequently agreed to in writing by AOL pursuant to the process set forth below in this Letter Agreement, and that in the event of a conflict between the provisions of the Non-Compete Agreement and the provisions of this Letter Agreement the provisions of this Letter Agreement shall prevail.

B. You will provide AOL with written notice of not less than thirty days, prior to any action by you or Newco which would otherwise constitute a violation of the Non-Compete Agreement but for this Letter Agreement. In the event that AOL, in its reasonable discretion, decides to waive the violation of the Non-Compete Agreement, it will so notify you in writing not more than fifteen days after receiving such notice from you. Reasonable

2000e et seq (prohibiting discrimination on account of race, sex, color, national origin or religion); the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et seq (prohibiting discrimination on account of age); the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq (prohibiting discrimination on account of disabilities); or any similar local, state, or federal laws.

- (iii) Not to pursue any individual claim against the other party (including the Affiliated Companies) (except for a breach of this Letter Agreement), and not to file a lawsuit in any local, state or federal court or an individual monetary claim with any local, state or federal agency in connection with your employment or the termination of your employment with the Company.

Additionally, the Company agrees that no claim will be made against the WAIS escrow account established in connection with the acquisition by the Company of WAIS, Inc. in May 1995.

We contemplate entering into a Consulting Agreement, which will reflect the matters described above and contain the typical provisions regarding the termination of your employment with AOL, and the necessary documents regarding Newco in the next several weeks, but in no event later than January 23, 1996. If you have any questions about this Letter Agreement please call me.

America Online, Inc.

By: _____
Lennert J. Leader
Senior Vice President

WAIS, Inc.:

By: _____
Michael M. Connors

Agreed:

Brewster Kahle Date